

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PRESTON CHARLES, et al.,	*	Case No. 16-CV-6868 (KAM)
	*	
	*	
Plaintiff,	*	Brooklyn, New York
	*	August 21, 20178
v.	*	
	*	
OPINION ACCESS CORP., et al.,	*	
	*	
Defendants.	*	
	*	
* * * * *		

TRANSCRIPT OF CIVIL CAUSE FOR FAIRNESS HEARING
BEFORE THE HONORABLE JAMES ORENSTEIN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: JEANNE-MARIE BATES CHRISTENSEN, ESQ.
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1 (Proceedings commenced at 10:46)

2 THE CLERK: Civil cause for fairness hearing,
3 Charles, et al. vs. Opinion Access Corp., et al., docket no.
4 16-CV-6868.

5 Will the parties please state their appearances for
6 the record, starting with the plaintiffs.

7 MR. RAHMAN: Good morning, Your Honor For the
8 plaintiffs, Tanvir Rahman and Jeanne Christensen, Wigdor, LLP,
9 for plaintiffs and the class members.

10 MS. CHRISTENSEN: Good morning.

11 MS. KLEIN: Good morning, Your Honor. Eve Klein,
12 from Duane Morris, for the defendant.

13 THE COURT: Good morning.

14 MS. WILLIAMS: Good morning, Your Honor. I'm
15 Chrislyn Williams and I'm pro se.

16 THE COURT: Okay. Actually, do you guys represent
17 Ms. Williams as a member of the class?

18 MR. RAHMAN: Technically --

19 MS. CHRISTENSEN: Yes.

20 THE COURT: Okay. So they are here to represent you
21 but you can certainly speak for yourself.

22 MS. WILLIAMS: Okay.

23 THE COURT: I'll make sure that you understand that
24 as things currently stand they represent you.

25 And I understand we have in the gallery a couple of

1 other members of the proposed class; Mr. Mills and Mr. Thomas.
2 Is that you, folks?

3 MR. MILLS: Thomas Mills.

4 THE COURT: Okay. Folks, you're free to participate
5 if you want. If you want to be heard, just you let me know.
6 Okay.

7 MR. MILLS: Thank you.

8 THE COURT: Okay. So we're here to have a fairness
9 hearing on the proposed settlement. I've read the papers and,
10 Ms. Williams, you wanted to be heard about the settlement
11 proposal, so I'm all ears.

12 MS. WILLIAMS: Okay. I was notified about the
13 settlement. I no longer work there. It's been well over five
14 years since I was employed there.

15 THE COURT: Yeah.

16 MS. WILLIAMS: And I was notified via mail at my
17 post office box and I sent you the letter explaining all of
18 that.

19 THE COURT: Yes.

20 MS. WILLIAMS: The details.

21 THE COURT: And when I was -- I just don't feel that
22 I was notified adequately. Like I know that they weren't
23 required by law to, you know, send a registered letter or just
24 send it -- it was sent Third Class Mail.

25 So when I received it, it received it late and then

1 when I reached out to them, it took two or three -- it took --
2 you know, they were like oh, it kept ringing and they're like
3 well, someone will notify you. You have to give them at least
4 48 hours.

5 So then when I was notified I said let them know --
6 I said listen, by the time I received it it was late June and
7 I wanted to reach out to someone to find out what was going
8 on. I don't want to just sign something. It was past the due
9 date.

10 So they said well, sorry, it's too late. Really
11 sorry. And I said well -- and I explained the situation and
12 they're like I'm sorry.

13 And I -- then he said well, do you know what you're
14 entitled to and I said no, what am I entitled to?

15 And then he said I don't know. So I don't feel like
16 I was given any information about what my rights were. I know
17 it was -- the place was horrible.

18 I know that I was trained there for 20 hours. I was
19 very articulate, very good on the phones and then once I
20 started working there, people -- they were like oh, depending
21 on how many interviews you require, if you're able to get a
22 lot of interviews and be able to keep people on the phone
23 they'll do this for you and they'll give you this bonus and
24 all. And that wasn't happening. And so that's one of the
25 reasons why I left there.

1 But I just feel like the people that -- then when I
2 reached out again to the party that was handling the lawsuit
3 that was in Minnesota, I asked them, I left them a message
4 asking them what I was entitled to, and again, they still
5 never -- they never even returned my call.

6 So that's why I reached out to the Department of
7 Labor and I reached out to the Attorney General to find out
8 what my rights are, because I feel like the letter should have
9 stated and then even when I sent the letter to you, it still
10 said our records indicate you were employed one day. That
11 doesn't tell me anything.

12 THE COURT: I'm sorry. You sent the letter to me
13 and that's what I said?

14 MS. WILLIAMS: No. I sent a letter to you and then
15 the --

16 THE COURT: Oh, I see. And they wrote back.

17 MS. WILLIAMS: They wrote back and they said our
18 records indicate that you were employed one day. That's all
19 fine, but what day? Like tell me what day. You still aren't
20 giving me any -- if you're representing me, I feel like you
21 should be doing due diligence to say okay, well, this is
22 providing you that information and allowing me to decide if I
23 want to opt in or opt out.

24 A lot has happened since --

25 THE COURT: Well -- and I understand your

1 dissatisfaction with receiving the notice.

2 MS. WILLIAMS: Right.

3 THE COURT: The timing -- you feel the notice that
4 you got didn't tell you enough about the nature of the case,
5 or what was involved?

6 MS. WILLIAMS: Correct. And I --

7 THE COURT: What would like to know?

8 MS. WILLIAMS: Well, I would like to -- I wanted to
9 know then like --

10 THE COURT: No, no. What do you want to know now?

11 MS. WILLIAMS: What do I want to know now? I want
12 to know -- I still haven't found out what the class action --
13 I know the place was horrible. I know that. That's why I
14 left.

15 THE COURT: That's not what the case is about
16 though, whether it was horrible.

17 MS. WILLIAMS: But --

18 THE COURT: It's a wage claim.

19 MS. WILLIAMS: Right, but I know what I'm saying --
20 but I know the place wasn't -- I know the wages weren't fair.
21 I know that.

22 THE COURT: Well, what is it you want to know about
23 the litigation?

24 MS. WILLIAMS: I wanted to know what I was entitled
25 to and they couldn't even answer that question.

1 THE COURT: Well, they've now told me, and frankly,
2 I'm not sure I quite understand the letter myself.

3 MS. WILLIAMS: Because I had known that then I was
4 like why would I have done all that. I could have told you
5 that over the phone. That's a ten second phone call, oh, you
6 were employed there for one day. But it doesn't make sense
7 because I know I had trained there for at least 20 hours.

8 THE COURT: Yeah. The letter I got dated August
9 13th -- and I'm noticing now, and I didn't notice it earlier,
10 Mr. Rahman, your August 13th letter to defendant's counsel but
11 not to Ms. Williams. You didn't send that to her?

12 MR. RAHMAN: No, we did not.

13 THE COURT: All right. One might think that if
14 you're going to respond to something she said you might have
15 the courtesy to let her know.

16 But in a footnote in their letter to me, Ms.
17 Williams, they said that your share of the settlement would be
18 \$3.25.

19 MS. WILLIAMS: Okay. And that's fine, but that --

20 THE COURT: Let me just finish the sentence.

21 MS. WILLIAMS: Right. Sorry.

22 THE COURT: But they also say at the bottom of page
23 1 into page 2 that they couldn't provide an estimate of your
24 settlement share because they're not in possession of this
25 information.

1 So on one hand they're saying they don't know. And
2 on the other hand in a footnote they're saying they do know
3 and it's \$3.25.

4 Can either of you counsel shed some light on that?

5 MR. RAHMAN: Sure, Your Honor.

6 It's correct that we do not possess the breakdown
7 (indiscernible) terms of what they're estimated to receive.
8 That's data that the case administrator Dahl possesses.

9 But when we did -- the parties jointly reached out
10 to Dahl after we heard -- after we received Ms. Williams'
11 letter motion and Dahl informed us that she would be entitled
12 to \$3.25.

13 THE COURT: And that wasn't something you can tell
14 her by saying I'll check with the claims administrator and
15 call you back?

16 MR. RAHMAN: Your Honor, I --

17 THE COURT: Was that something you could have done?

18 MR. RAHMAN: I could have done that.

19 THE COURT: Any reason you didn't?

20 MR. RAHMAN: I think -- I believe I told her if she
21 contacted --

22 THE COURT: Is there any reason you did not do it,
23 Mr. Rahman?

24 MR. RAHMAN: No, there isn't.

25 THE COURT: All right. So they've been unreasonably

1 rude to you. I don't know why. But now you have the
2 information. And I'm sure going forward counsel won't be rude
3 to other people who will find themselves in a similar
4 situation.

5 It's really needlessly disrespectful and it's one of
6 the reasons people have a dim view of these kinds of actions,
7 unfortunately.

8 MS. WILLIAMS: Right.

9 THE COURT: But there it is. Anyway, so what else
10 would you like to know about the lawsuit?

11 MS. WILLIAMS: I mean, that's -- I guess that's
12 adequate information, but I wanted to know the dates that -- I
13 mean, I don't know -- I think he said -- he explained that he
14 doesn't have the information so he doesn't know the dates of
15 the employment there.

16 THE COURT: Yeah.

17 MS. WILLIAMS: So I just wanted to know how they
18 came up with that number then and how do they -- they said
19 they have record that I was employed there one day. So what
20 do they --

21 THE COURT: Well, what's your recollection of when
22 you worked there?

23 MS. WILLIAMS: Well, I know I trained there for 20
24 hours.

25 THE COURT: Over how many days? Do you know?

1 MS. WILLIAMS: I'm not sure but then I was on the
2 phones and on the floor and I'm not sure how many days I was
3 there because the job I'm at now I've been there for like five
4 years. So I'm not sure. It was a while ago. So that's what
5 I was trying to get an answer.

6 THE COURT: Do you have any sort of ballpark
7 recollection of how long you were employed there?

8 MS. WILLIAMS: To be honest, no. I mean, I'm not
9 sure if it was days. I'm not sure. I honestly don't know.

10 THE COURT: All right. Counsel, do any of you have
11 information about Ms. Williams' employment?

12 MS. KLEIN: Your Honor, we were supposed to get a
13 list from the administrator and they have not provided defense
14 counsel with the list despite requests as recently as last
15 evening. So I don't have that information, but I do know that
16 as trainees we reached a settlement on an average number
17 amount.

18 THE COURT: You don't know.

19 MS. KLEIN: And it would be -- I think --

20 MR. RAHMAN: Your Honor --

21 MS. KLEIN: -- it was a one day --

22 THE COURT: We could all make guesses and estimates
23 but I was really just asking if anybody knows.

24 MR. RAHMAN: Your Honor, I don't --

25 MS. KLEIN: I'm sorry. Please -- in the middle.

1 THE COURT: In the middle so everybody can be heard.
2 Thanks.

3 MR. RAHMAN: Your Honor, just to make it clear, the
4 defendants -- the company did provide the administrator with
5 the number of days that each class member worked, per year.
6 Broken down by year. So that was provided by the defendants
7 to Dahl.

8 I don't if the defendants or Dahl knows the precise
9 dates of employment, the days that class members worked but I
10 do know that there was a list that we also received that list
11 the number -- full number of days that --

12 THE COURT: Guys, I wasn't asking for an argument,
13 or to have you justifying yourselves. We can get to that.
14 I'm really just finding it -- trying to find out if anyone has
15 the information. If you don't, you don't.

16 Now if the problem is that you can't get it from
17 that claims administrator, that raises an issue about whether
18 we should have a different administrator, because one would
19 hope you'd have somebody responsive to the parties and members
20 of the class, but we can come back to that.

21 All right. So nobody knows. Now is there anything
22 else you're trying to find out?

23 MS. WILLIAMS: No, I mean, that's what I wanted to
24 know.

25 THE COURT: I see.

1 MS. WILLIAMS: I read the letter and the question
2 was about opting in and he precisely said no.

3 THE COURT: Well, but you -- I don't know if you see
4 it. You have been allowed to opt in now.

5 MS. WILLIAMS: Yes. After -- yes.

6 THE COURT: Now the question is is that still what
7 you want to do, or do you want to exclude yourself and do you
8 understand what the choice is about?

9 MS. WILLIAMS: Right. I understand the choices and,
10 you know, I'd like to opt in.

11 THE COURT: Okay. So even though they could get --

12 MS. WILLIAMS: I mean, it's more of like a principle
13 thing, because I do feel that -- I do feel that a lot of -- I
14 mean, and I don't mean to sound a certain kind of way, but
15 there are a lot of people -- the people that are there aren't
16 the type of people that will know. They rely on -- they rely
17 on other -- on authority to give -- to provide them with
18 information. They aren't the type of -- some of those people
19 there may not be able to comprehend the letter that they were
20 sent. So it's not a clear letter in layman's terms.

21 So if they ring either party, either the people that
22 are handling the class action -- the administrators or the
23 counsel, they should be able to provide them with information
24 and not make it so difficult, because a lot of people just go
25 do as they're told. They just sign and say okay, here. And

1 that's not fair.

2 THE COURT: I certainly agree that the lawyers and
3 the claims administrators should be more responsive.

4 MS. WILLIAMS: Right.

5 THE COURT: And we can try and work on that.

6 Do you have any objections to the terms of the
7 settlement, because if -- you know, you understand that when
8 there's a settlement for a class everybody who doesn't opt out
9 is bound by those terms. So you don't get more. You give up
10 the claims that are released. You're agreeing to be bound by
11 all the terms of the settlement.

12 So this is your chance to object to it, if you think
13 that there's something unfair about it.

14 MS. WILLIAMS: I mean, I honestly don't find the
15 fees -- the attorney fees to be fair.

16 THE COURT: What's your concern about it?

17 MS. WILLIAMS: Because the fact that I'm sitting
18 here and that I had to reach out and this took a lot of work.
19 Time that I don't have. I have a number of things that I'm
20 working on, but I believe in my rights. I don't like people
21 violating my rights and I believe that everyone should be
22 heard. Everyone should -- has a right to knowledge, to
23 information.

24 And if you ring someone and they're dismissive to
25 you, you should find out why.

1 THE COURT: Yeah.

2 MS. WILLIAMS: And -- yeah, so -- and I don't think
3 that the fee -- I don't think they're appropriate. I don't.

4 THE COURT: Okay. Now one of the things about the
5 agreement and counsel, please correct me if I've got this
6 wrong, the whole thing has to be approved by the court.

7 But part of the agreement is that if the fee
8 provision -- if the amount of fees awarded is reduced, the
9 amount of the reduction is distributed among the class
10 members. Is that correct?

11 MR. RAHMAN: Not the class members, but the
12 authorized claims people who put in claims would be getting --

13 THE COURT: Right. So --

14 MR. RAHMAN: Not all class members.

15 THE COURT: So it's people who would be getting
16 money under the settlement would be getting a pro rata share
17 more.

18 MR. RAHMAN: Yes.

19 MS. WILLIAMS: That's correct.

20 THE COURT: Ms. Williams, one thing to consider,
21 and tell me whether you object to the settlement, is whether
22 you object to the overall settlement, meaning a class is
23 approved and people have a procedure for making claims and
24 those who make their claims get a share of the amount.

25 If you're objecting to that whole thing because you

1 think the entire settlement is unfair, for any reason, or is
2 it just that the part of it that awards a third in fees to the
3 plaintiff's counsel, that's unfair. It should be a lower
4 amount to be distributed, but otherwise the settlement is fair
5 in your mind.

6 MS. WILLIAMS: Well, I read the letter and it said
7 that the overall amount that the defendants have put into the
8 -- was 1.5 million.

9 THE COURT: Right.

10 MS. WILLIAMS: So then it's saying that the attorney
11 fees are \$500,000.

12 THE COURT: Right.

13 MS. WILLIAMS: And I'm not sure how many people are
14 in the class that are entitled to opt in or opt out. So I'm
15 not sure how much -- how many people are part of that whole
16 pie, but I think that people that have been subjected to
17 unfair wages should definitely benefit more than people who
18 have never set foot in a place that has walked -- walks all
19 over people's rights and is not paying them fairly.

20 THE COURT: Who are you comparing them to? The
21 people who have never set foot? The people who didn't work
22 for them?

23 MS. WILLIAMS: The attorneys.

24 THE COURT: Oh, I see what you're saying. Yes.

25 MS. WILLIAMS: The attorneys are getting this

1 massive fee and meanwhile the employees that were there and
2 subjected to -- it's bad enough the wage is not that high, the
3 unfair wages. There's people that are living in poverty level
4 and then be told oh, well, this party that's never been -- I
5 mean, you know, granted --

6 THE COURT: I get your point. What I'm trying to
7 find out is that a reason in your view to say the whole
8 settlement is thrown out, or the settlement is preserved? The
9 \$1.5 million put into the fund. That's preserved. But the
10 amount given to the lawyers is less so that there's more to
11 distribute. Do you understand the choice?

12 MS. WILLIAMS: Yeah, I understand the question.

13 THE COURT: And I'm just not sure I understand what
14 your position is on that.

15 MS. WILLIAMS: It's not even -- being given this
16 information and -- 3.25, that's fine. I'm not -- that's
17 neither -- that's irrelevant to me at this point.

18 THE COURT: Uh-hm.

19 MS. WILLIAMS: But because I've worked there and I
20 know that the people that are there, they're -- I mean, I'm
21 not trying to sound any -- they're there because they have to
22 be there, or they're there because that's maybe the best that
23 they could do.

24 So I think that they should be given as much as
25 possible to make them -- to make the situation fair and right,

1 and I think the only way to do that is to give them as much
2 possible. And giving the attorneys a third of the settlement I
3 don't find that fair.

4 THE COURT: Okay. And let me -- because I'm trying
5 to make sure I understand what you'd like to see happen here.
6 So one possible outcome is that -- and I'm not the presiding
7 judge. I'll make a recommendation.

8 MS. WILLIAMS: Right.

9 THE COURT: It's a different judge who will make the
10 ultimate decision.

11 But the presiding judge might say overall this is
12 not a fair settlement, throwing the whole thing out. And then
13 unless some new settlement is reached, at which point people
14 would have a chance to be heard again, the case would have to
15 be litigated. And you might win, you might lose, but that's -
16 - there would be no particular amount guaranteed to anybody.

17 MS. WILLIAMS: Right.

18 THE COURT: It would have to be litigated. That
19 would be one resolution of what's going on today.

20 Another -- at the other extreme is the court says
21 you know what? I've heard the objections. I think the whole
22 thing's fair. I'm going forward with it.

23 MS. WILLIAMS: Right.

24 THE COURT: And then you're bound -- having opted
25 in, you're bound to get 3.25 and the lawyers get what they

1 get.

2 MS. WILLIAMS: Right.

3 THE COURT: A middle ground is the overall
4 settlement, the end of the case for a total payment of \$1.5
5 million is approved, but the court says the lawyer's fee
6 should be reduced to some other amount, and I wouldn't tell
7 you what that is because I don't know, but just some lesser
8 amount and the difference between what they were asking for
9 and what they get that's distributed on the people who are
10 already getting a share of the settlement.

11 MS. WILLIAMS: Right.

12 THE COURT: Between, or among those three choices,
13 which is the one you're in favor of? In other words --

14 MS. WILLIAMS: Well --

15 THE COURT: -- nobody gets anything now and the case
16 goes on and it's litigated.

17 MS. WILLIAMS: Well, probably the one where the
18 employees get their share of the settlement as quickly as
19 possible, because I'm sure that --

20 THE COURT: Yeah.

21 MS. WILLIAMS: -- they need it. And I'm saying that
22 -- I'm not trying to sound condescending or anything, but I
23 just -- I mean, I've worked there and it was a horrible place,
24 which is why -- and I'm not saying like the place, but I'm
25 just saying like any time you mislead someone and you say one

1 thing when they accept a job and promise them this and that,
2 or you're going to get this extra for each interview and
3 you're going to get, you know, and then you don't live up to -
4 - you don't fulfill the -- fulfill your promises, then I just
5 feel like it's just false. And some people just didn't have
6 any -- that's why they're so long.

7 So whatever would allow them -- I mean, I don't
8 agree with the attorney fees but if it will allow the
9 employees to get their -- I'm just stating my opinion.

10 THE COURT: Okay. So it sounds like to the extent
11 you have an objection, it's only to the amount of the fees and
12 that one thing that would be acceptable, or more acceptable to
13 you than approving the whole thing is approving the
14 settlement, but reducing the fee award.

15 And that that would be better, in your view, than
16 throwing out the whole thing and having it go forward to
17 litigation. Have I got it?

18 MS. WILLIAMS: Correct.

19 THE COURT: Have I got it? Is that a fair
20 assessment?

21 MS. WILLIAMS: I think you got what I mean.

22 THE COURT: Okay. Good. I think I understand your
23 objection now and if there's anything more you'd like to add,
24 I'll hear you, but if not, I'll ask for responses from the
25 lawyers. Is there anything else you'd like to say?

1 MS. WILLIAMS: No.

2 THE COURT: Okay. Counsel, anyone want to be heard
3 on the objections?

4 MS. CHRISTENSEN: Your Honor, Jean Christensen. I
5 just want to say, Ms. Williams, that I'm a partner at the firm
6 and I apologize on behalf of the firm to what happened to you.

7 And it certainly raised concerns with us ever using
8 this particular company to administer class actions going
9 forward.

10 MS. WILLIAMS: Right.

11 MS. CHRISTENSEN: As well as internally raised
12 awareness so that something like that doesn't happen again.

13 MS. WILLIAMS: Okay.

14 MS. CHRISTENSEN: Thanks for coming in.

15 THE COURT: And Ms. Klein, is there anything you
16 wanted to say?

17 MS. KLEIN: I have no position on the fees, Your
18 Honor.

19 THE COURT: Okay. Give me one moment here.

20 All right. Well, I'm certainly going to take your
21 objection into account and make my recommendation and you are
22 welcome to stay for the rest of the proceeding, if you'd like.
23 Don't feel you have to. I have my own questions for counsel
24 and I don't anticipate making a recommendation today. I'm
25 going to have to write something up. But do feel free to stay,

1 if you like, or leave. Okay?

2 MS. WILLIAMS: Okay.

3 THE COURT: All right. Counsel, I'm happy to hear
4 from you if you'd like to make a presentation. I've read your
5 papers. If you prefer, I can ask questions that I have, you
6 know, and you can respond. However you prefer.

7 But if there's something you'd like to say at the
8 outset, I'm happy to hear you.

9 MR. RAHMAN: Your Honor, there was two points that
10 we wanted to bring the court's attention and then I think we
11 can allow Your Honor to ask his questions.

12 THE COURT: Sure.

13 MR. RAHMAN: In Section 6.1(b) --

14 THE COURT: Okay. Give me a moment to get to the
15 settlement agreement.

16 MR. RAHMAN: It's on page 15.

17 THE COURT: Yes, give me a moment please. I'm sorry
18 section 6. --

19 MR. RAHMAN: 6.1(b) -- 6.1(c). There's a typo.

20 THE COURT: Yes.

21 MR. RAHMAN: There's a -- it says 180 days will be
22 void. It should be 120. I'm not quite sure why that typo is
23 in there, but it should be that after 120 days the checks that
24 go out to class members become null and void, not 180 days.

25 (Pause.)

1 THE COURT: So if they're not cashed within 120,
2 instead of 180 days.

3 MR. RAHMAN: Yeah.

4 THE COURT: All right. Anything else?

5 MR. RAHMAN: And one last point.

6 So the parties have also agreed to permit two other
7 class members who filed late opt ins, who gave us reasons why.

8 THE COURT: Yes.

9 MR. RAHMAN: And so once we add their shares to the
10 authorized claimant's amount, and also we were told by the
11 administrator that there was also a -- they miscalculated the
12 figures slightly that we gave to the court in our papers.

13 So the total value now that's going to be going to
14 authorized claimants, if Your Honor approves the settlement,
15 would be \$458,879.64, which represents 47.71 percent of the
16 potential funds that could be claimed by class members and
17 that would ultimately increase the total amount that
18 defendants would have to pay if Your Honor approves the
19 incentive awards and the class counsel's fee request. That
20 would increase that number to \$997,058.64. So a slight
21 adjustment to those numbers.

22 THE COURT: I'm sorry. So the total number going to
23 claimants would be?

24 MR. RAHMAN: Would be \$458,879.

25 THE COURT: And the total amount of fees that you

1 request?

2 MR. RAHMAN: \$500,000.

3 THE COURT: Okay. Well, I understand your position.
4 I'll ask you to submit a letter with the revised numbers, just
5 a summary of it.

6 MR. RAHMAN: That's fine.

7 THE COURT: Okay. Anything else?

8 MS. KLEIN: Yes, Your Honor.

9 THE COURT: Ms. Klein?

10 MS. KLEIN: Two points. With regard to the
11 authorized claimant amount, I had \$423,879 as of 6:00 p.m. ast
12 evening, so --

13 MR. RAHMAN: We added the service awards to --

14 MS. KLEIN: Well, the service awards are in addition
15 to that.

16 THE COURT: I'll ask you guys after -- we'll set a
17 schedule for a supplemental submission, but I'll just ask you
18 to give me a joint report and let me know if there's any
19 difference of opinion about what the amounts are.

20 MS. KLEIN: Okay. And the other item I wanted to
21 raise. At the last hearing you asked me to address this
22 before you today. We are seeking a general release for the
23 one opt in and two named plaintiffs because they're getting
24 the service fee, and you asked me if there was any authority
25 to support that.

1 And I brought a decision exactly on point. That is
2 *Ranboth*, R-A-N-B-O-T-H - *Venditti*, V-E-N-D-I-T-T-I, vs.
3 *National Retail Sols* and that is the Northern District case
4 that was dated February 6, 2018 and in that case the court
5 specifically approved that.

6 If I may, I'll hand up a copy of the decision.

7 THE COURT: No, no. You'll include it -- a citation
8 in the supplemental letter.

9 MS. KLEIN: Okay.

10 THE COURT: Okay. A few questions. So am I correct
11 that you estimate that the settlement amount is roughly ten
12 percent of what counsel calculated the overall liability to
13 be?

14 MR. RAHMAN: Your Honor, if we include the total
15 amount that could potentially go to the class in terms of the
16 --

17 THE COURT: If you get up in front of a judge after
18 winning a verdict, you're successful in the case, how much do
19 --

20 MR. RAHMAN: If we were win on all our claims and
21 certify the class and --

22 THE COURT: Well, if you get what you think your
23 clients are entitled to.

24 MR. RAHMAN: Right. The number would be around 17
25 million, if we include the --

1 THE COURT: 17 million. So the total amount is
2 actually less than ten percent. Okay.

3 And just walk me again through the reasoning for
4 settling at less than ten cents on the dollar?

5 MR. RAHMAN: Well, Your Honor, in terms of the --
6 we're alleging were the unpaid wages to our clients, we're
7 actually recovering 75 percent of what we estimate to be the
8 best case scenario of unpaid wages, which we lay out in our
9 papers.

10 The additional 15 million we calculated for the
11 inaccurate wage statement penalties, which, as we stated in
12 our motion, that we have not found a case where that claim has
13 been certified --

14 THE COURT: So why didn't you proceed on that
15 theory? Look, if you think it's a wrong theory, say so, but
16 then I have to question why you're bringing it in the first
17 place. If you think it's correct, tell me that.

18 MR. RAHMAN: Well, we do believe we would be able to
19 at the end of the day be able to certify that claim. But,
20 again, like I said, we have not found a case that has
21 addressed that and defendants have raised some --

22 THE COURT: Has a case gone the other way?

23 MR. RAHMAN: We have not found case law that goes
24 either way. It would be a case of first impression, as far as
25 we're concerned.

1 THE COURT: Uh-hm.

2 MR. RAHMAN: As far as we know. And defendants have
3 raised a viable defense. They've articulated that they have
4 found case law where we'd be unable to sort of double dip
5 between inaccurate wage statement penalties and unpaid wages.
6 So there is that case law out there.

7 And, again, the issue of being able to certify those
8 kind of claims would be very much up in the air because,
9 frankly, we need to look at each individual class members and
10 look at the amount of wage statements for each of them that
11 were inaccurate and that would require an individualized look.

12 And, again, while we did allege class claims --

13 THE COURT: That wouldn't preclude class
14 certification though, right?

15 MR. RAHMAN: Class certification. Right.

16 THE COURT: Okay. It would just be a matter of
17 calculation following a trial on the -- with representative
18 witnesses, right?

19 MR. RAHMAN: If the class is certified, potentially
20 yes. Yes.

21 THE COURT: Okay.

22 MR. RAHMAN: But getting it certified would, in our
23 view, be a very difficult process from what we know.

24 THE COURT: Class certification would be difficult.

25 MR. RAHMAN: Yes. On that claim.

1 THE COURT: On that claim.

2 MR. RAHMAN: On that claim.

3 THE COURT: On other claims?

4 MR. RAHMAN: On other claims, we were confident that
5 we would be able to certify those. And, again, like I said,
6 for the minimum wage for the training claim for the call in
7 pay claim and for the off the clock claim, the total estimated
8 damages -- total estimated back wages owed to the class
9 members, again, best case scenario without any defenses or any
10 offsets, would be \$2 million.

11 And we're getting -- we're able to secure a
12 settlement at 75 percent of that number.

13 THE COURT: So you're essentially treating the other
14 \$15 million as worth nothing.

15 MR. RAHMAN: We're not doing that, Your Honor.

16 THE COURT: What do you think it's worth?

17 MR. RAHMAN: How much do we think it's worth?

18 THE COURT: What do you think your chances of
19 succeeding on that claim?

20 MR. RAHMAN: Like I just articulated, I think we
21 have a difficult change of getting that claim certified. I'd
22 put us at maybe a ten percent chance of getting that
23 certified.

24 THE COURT: Okay. All right. But overall --
25 certifying a class, is that something you thought was likely

1 to be a close call?

2 MR. RAHMAN: A close call is accurate. Yeah, it
3 could be a close call.

4 THE COURT: Really. Because my recollection --
5 guys, tell me if I'm -- if I've got this wrong, but there was
6 a stipulation to a collective certification at the outset.

7 MS. KLEIN: Yes, the notice. For notice purposes.

8 THE COURT: Right. But that's based on -- you
9 didn't think it was worth litigating whether there were
10 similarly situated plaintiffs out there.

11 MS. KLEIN: For the FLSA issue, yes. But not for
12 all the state law issues.

13 THE COURT: Okay. Fair enough. But in other words,
14 if the case didn't settle, is there any real doubt that a
15 class would be certified? A class of plaintiffs? And guys, I
16 hate to have you pop up and down. Do feel comfortable. If
17 you prefer to stand, of course. But do feel free to sit.

18 MS. KLEIN: I think that from the defense standpoint
19 they would have had difficulty certifying at least a number of
20 their claims. It might have been one or so claims that were
21 certifiable, but, for example, there was a wage and time claim
22 which would have been individual specific. There was a
23 training claim, which there were certain payments made to
24 certain individuals.

25 THE COURT: Fair enough, Ms. Klein, but that's not

1 the question I'm asking. Is there any doubt in anybody's mind
2 that in the absence of a settlement there would be a class
3 action certified?

4 MS. KLEIN: Yeah. I would not concede that a class
5 action would have been certified. We had a lot of defenses to
6 certification.

7 THE COURT: The class. All right. What -- because
8 I mean, look. The existence of similarly situated plaintiffs
9 was stipulated. And you didn't have to but I assume you
10 recognize a reality that there are others out there with
11 comparable claims. A large group. No reason to suspect that
12 they wouldn't pass bar in terms of typicality and adequacy.

13 So what would be the -- what would be the point at
14 which class certification would be litigated.

15 MS. KLEIN: The first premise that has been
16 stipulating for notice purposes from our standpoint since it
17 was already state law class claims, (indiscernible) wasn't
18 doing much additional to do that. And we didn't want to
19 litigate that point. We wanted -- we knew there'd be some
20 discovery --

21 THE COURT: I'm not saying you're bound by it, but I
22 assume it reflected an assessment of what was out there. But
23 let's assume it has no import at all.

24 What's the issue on which you think they would fail
25 to get class certification in the absence of the settlement?

1 MS. KLEIN: I think that the claims were
2 individually specific for a lot of people, in terms of the
3 facts. The waiting time claim was a big piece of their claim.
4 That was in dispute as to what happened.

5 THE COURT: Okay.

6 MS. KLEIN: The same with the training claim. The
7 meal break claim only affected people who worked on certain
8 days. So I think that wouldn't have been class stipulated.

9 And on the wage statement issue, we had a legal
10 issue. We don't think -- it would have been a triple dip,
11 essentially, because the claim wasn't that the wage statements
12 themselves didn't contain the information, but because there
13 were errors in payment, then there were errors in the wage
14 statements. And they were already seeking the back wages, the
15 double damages and then a wage statement claim.

16 And there was Second Circuit authority that we think
17 would have questioned the ability to get paid a third time for
18 the same injury.

19 THE COURT: Okay. Anything else that anyone wants
20 to tell me about why the less than ten percent recovery is
21 reasonable? And don't get me wrong. I get it in terms of
22 procedural fairness. No doubt about that. But in terms of
23 substantive fairness?

24 MS. KLEIN: Can I just say one more point?

25 THE COURT: Yes.

1 MS. KLEIN: I mean, when we're saying less than ten
2 percent recovery, that was based on, in the defense view, a
3 ridiculous number that was put out there.

4 THE COURT: I get it.

5 MS. KLEIN: And, in fact, was trying to use to
6 hammer in the settlement. The amounts that are paid are
7 really substantial for the claims that --

8 THE COURT: I know, but I'm using less than ten
9 percent of what the plaintiff's claim they were owed.

10 MS. CHRISTENSEN: Your Honor, I would just like to
11 mention, on the issue of the statutory wage notice, I think
12 there's a distinction to be made between liability -- a
13 liability determination and then damages analysis.

14 And so while I think the liability argument is
15 strong, if we didn't fall prey to the double dipping issue
16 that, you know, was it an inaccurate wage statement.

17 But that doesn't mean that automatically the
18 statutory -- those penalties would be awarded -- a court
19 would make them pay for every single wage statement that was
20 potentially inaccurate and I think that's just -- it's a
21 noteworthy distinction because it pushes -- while we still
22 have a liability -- a case for pleading a claim which,
23 frankly, we'd be amiss if we hadn't, because it's our duty to
24 make any potential claims that we have.

25 I'm not sure that such a damages analysis is

1 reasonable.

2 THE COURT: Well, I don't know if you have a duty to
3 make a claim that you think is really not going to pan out.
4 And one reason not to do it, you have to exercise your
5 judgment.

6 But one of the things that informs the judgment I'm
7 sure is the prospect of a possible settlement and justifying
8 the abandonment of a claim to the court at the fairness stage.

9 And look. That's a call for you to make at the
10 outset and I have to assess the substantive fairness at this
11 stage and I understand your arguments.

12 Unless there's anything further on that, I'd like to
13 go on to a couple of other issues that I wanted to ask you
14 about.

15 Okay. Actually, before I go onto issues about the
16 settlement, I neglected -- one housekeeping note.

17 There was an objection from somebody named
18 Estafania. Elsie Estafania. And I note that what she says in
19 her letter is, "Therefore, I object to staying in the class in
20 order to further the investigations into the additional class
21 action discrimination and fraud possibly as well." I believe
22 I'm reading that correctly. It's handwritten.

23 To my mind that's not so much an objection to the
24 settlement as a decision to opt out. But does anybody read it
25 differently? And what I would want to do to avoid making the

1 wrong call about it is have the administrator reach out to Ms.
2 Estafania specifically to say do you wish to not participate
3 in the settlement at all, or do you want to stay in and object
4 to it. Make sense to everybody?

5 MS. KLEIN: That's acceptable.

6 MS. CHRISTENSEN: Yes.

7 THE COURT: Okay. Good.

8 And forgive me if I don't go precisely in the order
9 you've addressed these issues in your memorandum.

10 On the service awards, just give me a comparison on
11 the amount that you're proposing to the amounts that each of
12 the proposed award recipients would get under the settlement.

13 MR. RAHMAN: Sure, Your Honor. Preston Charles, who
14 is seeking at \$15,000 incentive award, he -- based on the
15 number of days that he worked at OAC, he's estimated to
16 receive \$439.30.

17 THE COURT: Uh-hm.

18 MR. RAHMAN: Mr. Graziano was seeking a \$5,000
19 incentive award.

20 THE COURT: I'm sorry. I though Graziano was getting
21 15 also?

22 MR. RAHMAN: No, he was the opt in.

23 THE COURT: Oh, I'm sorry. Oh, yes. Yes. I had my
24 notes wrong. Forgive me. Yes.

25 MR. RAHMAN: Yeah. Based on his days of work he's

1 estimated to have to be receiving \$715.90, and Mr. Pabon, who
2 is seeking \$15,000 of an incentive award, based on his days
3 worked he's estimated to be receiving \$3,088.15.

4 THE COURT: So we have multipliers -- you know,
5 comparing the service award to the claims of up to 30. Do you
6 have any information or could you reasonably provide it to
7 compare that aspect of it?

8 You gave me some cases about percentage service
9 awards, or what percentage of the fund they get. But I can't
10 really compare that to how it compares it to the award
11 recipient's claims.

12 Is that something you'd be able to determine from
13 the cases you've cited?

14 MR. RAHMAN: We can go back. I have not seen that
15 kind of analysis.

16 THE COURT: I'd just like you to sort of cross
17 check, if possible. I'm not terribly concerned about the
18 named plaintiffs awards, though I do want to give that some
19 thought.

20 But what is Mr. Graziano getting an award for? What
21 did he do? Because he -- as an opt in he wasn't involved in
22 the initial intake and helping you write the pleadings. What
23 did he actually do?

24 MR. RAHMAN: Well, Your Honor, he can --

25 THE COURT: And I'm sorry. Before you answer. And

1 why him among all of the opt ins?

2 MR. RAHMAN: Well, he was the only opt ins. There
3 were no other opt ins. And he did provide us with information
4 about his experiences, put us in contact with other potential
5 class members.

6 THE COURT: How much time did he spend on this?

7 MR. RAHMAN: Excuse me?

8 THE COURT: How much time went into his
9 participation?

10 MR. RAHMAN: Mr. Graziano's? I would say several
11 hours. I mean, he -- again, he was a lone opt in. You know,
12 we talked in detail about the claims, his experiences.

13 He did not attend the mediation, but he was aware of
14 it, and he -- you know, he was consulted with during the
15 process, if there were any questions that we needed to get the
16 answers for our client.

17 So, yes, he was involved. He didn't -- his name was
18 not on the complaint, but he did opt in soon thereafter. And
19 he is receiving -- he's also agreed to a general release and
20 his award is a lot less than the other two.

21 THE COURT: Okay. The remainder of my concerns
22 relate to the fees and costs.

23 I note that you cite a number of cases approving a
24 third and a percentage approach.

25 They're almost, if not all, pre *Cheeks*. And I know

1 you take a dim view of judge's providing a gimlet eyed review,
2 as you call it, of billing records. But I think post *Cheeks*,
3 that's exactly what judges are doing.

4 I'd appreciate it if you provide the billing
5 records, rather than just a summary of the hours you claim.
6 The contemporaneous billing records.

7 MR. RAHMAN: Sure. I believe we did send Your Honor
8 -- we'll check again, but I believe we did directly to Your
9 Honor by mail the time records. Clearly, you haven't received
10 them. But we'll go back. We didn't intend to do that.

11 THE COURT: File it, if you would.

12 MS. CHRISTENSEN: Well, Your Honor, if I may.

13 I mean, usually, we don't -- we could go back and we
14 might have to redact things then because I consider our
15 billing records proprietary in the sense that sometimes we
16 write -- you know, we have strategy references and such
17 contained in our billing --

18 THE COURT: (Indiscernible) them or -- but that's
19 fine.

20 MS. CHRISTENSEN: Okay. But that's why we typically
21 don't put them on the ECF.

22 THE COURT: Okay. But if you're going to ask me to
23 recommend a fee award, I'd like to see them and I think it's
24 something that should be docketed.

25 And, you know, you make the call in terms of what

1 you redact and what you don't, but I'll make my recommendation
2 based on what I can see. So --

3 MR. RAHMAN: Your Honor, if we sent you the
4 unredacted records --

5 THE COURT: These are judicial documents to which
6 the public has a right of access. They're going to inform a
7 judicial decision. So, no, I'm not going to see something
8 that the public also can't see, unless there is a need to do
9 so.

10 So contemporaneous billing records, please, but two
11 basic concerns. There doesn't have to be a loadstar cross
12 check.

13 The rates that are reflected in the summary that you
14 provided me are higher than typically awarded in this
15 district. You're shaking your head, ma'am. Am I incorrect?

16 MS. CHRISTENSEN: Yeah. Your Honor, I was just next
17 door within the last 12 months where Judge Carolyn Wade
18 approved my \$750 fee and Mr. Rahman of 495.

19 I wasn't involved in this decision to suggest such
20 low rates as part of this motion, but those are our rates.
21 And we have had those rates approved. So I --

22 THE COURT: You said next door? Carolyn --

23 MS. CHRISTENSEN: In the State --

24 THE COURT: Oh, in the State Court.

25 MS. CHRISTENSEN: -- Supreme Court.

1 THE COURT: Okay. Yeah.

2 MS. CHRISTENSEN: And, you know, I mean, I can find
3 other decisions. I was telling Mr. Rahman that I'm pretty
4 sure I was awarded over \$500 an hour in this district. I don't
5 know how many years about, but six or seven. But I'll find
6 it.

7 THE COURT: Okay. And I can find you --

8 MS. CHRISTENSEN: Yeah.

9 THE COURT: -- dozens and dozens where the rates
10 typically approved in this district for FLSA cases is 350 to
11 400 an hour for partners and then down accordingly to other
12 attorneys and billers.

13 MS. CHRISTENSEN: All lawyers don't perform equal
14 work. And we work really hard to get those rates and we
15 typically get very, very good results for our clients.

16 And I don't think that I should be having my rate --
17 just because that's what some other lawyers get here
18 typically.

19 THE COURT: It's not just because what some other
20 lawyers get here. It's what the judges in this district
21 approve.

22 MS. CHRISTENSEN: If --

23 THE COURT: And to the extent that you want to have
24 a multiplier in excess of four, it's also far above what is
25 typically approved in this district. So I'm very concerned

1 about that.

2 And you know, I'm happy to hear from you beyond
3 what's in your papers about the reasons for a multiplier, but
4 this is a case where virtually nothing of any moment happened
5 in court. You exchanged some discovery. You mediated and you
6 settled early.

7 FLSA cases don't carry a lot of risk and I'm sure
8 you could come up with some examples, but I can't think of one
9 where the plaintiff didn't get some recovery through
10 settlement or a verdict. Not necessarily what the plaintiff
11 asks for, that's certainly true.

12 But in terms of the risk of getting compensated and
13 a fee switching context, I feel like I must be missing
14 something because I'm not sure I appreciate what the risk is
15 that needs to be compensated through the multiplier.

16 MR. RAHMAN: Well, Your Honor, in this case
17 specifically the defendants no longer operate in the State of
18 New York. They closed down their shop in December of last
19 year, 2017. So they no longer are even active in this state.

20 So there was a substantial risk in being able to
21 collect any kind of judgment from the defendants.

22 And, frankly, in our settlement not only do we have
23 an agreement, we also have multiple guarantees. We have
24 personal guarantees from the two owners of the company. They
25 supplied us with a back of evidence of their assets. So we --

1 which we can enforce, if there's a default.

2 So obviously if we had gone to trial -- obviously,
3 if we didn't win, we would have lost and who knows where we
4 would be.

5 But if we won at trial, there's no certainty that we
6 would ever be able to collect. We would be able to get a
7 personal guarantte as we have been able to get in this case.

8 And, again, the results speak for themselves. I
9 know Your Honor has mentioned the ten percent number, but the
10 --

11 THE COURT: Well, only because of what you told me.

12 MR. RAHMAN: But the back wages --

13 THE COURT: I'm not making any of this up.

14 MR. RAHMAN: Well, Your Honor, we wanted to be
15 candid with the court. We didn't want to go into -- to not be
16 fully candid, of course.

17 But realistically, you know, the result that we
18 achieved, you know, I think Ms. Klein would agree it -- the
19 defendants were not happy with the result.

20 It took a lot of -- the mediator did a tremendous
21 job and as we told the court it took several months just for
22 him to negotiate the terms of the settlement, because we were
23 -- of the agreement, because it was so contested it was -- and
24 you know, many times there was conversation about, you know,
25 should the parties go forward because, clearly, one side was

1 not happy with the result.

2 But so yes, could we have recovered more potentially
3 at a trial? Of course. But (indiscernible) speaking this
4 was, in our view, a tremendous result for the class of over
5 5,000 individuals.

6 MS. KLEIN: Your Honor, I would state that's a
7 candid assessment. There were a lot of issues, a lot of
8 negotiating back and forth and I do have an unhappy client.
9 So that is -- I want to state that.

10 THE COURT: I rarely see a settlement where anyone
11 walks out happy. Rarely. By it's nature settlement
12 disappoints everybody to some extent.

13 On the costs, why is the -- why are the meals and
14 taxi costs, and the mediator fee recoverable litigation costs?

15 The taxis and the meals don't strike me as a
16 litigation cost. It's part of the overhead that you cover
17 with your fees, I would think. But if I'm wrong about that,
18 I'm happy to be enlightened.

19 In terms of the mediator fee, particularly where you
20 could have come to a settlement conference with me or another
21 judge for free, again, given that all of this comes out of the
22 pockets of the class that you represent, I want to be sure
23 that despite your dim view of the term, I am being gimlet eyed
24 about it because my role here is to protect the class.

25 MR. RAHMAN: On that point, I would say that when

1 our clients agreed to cover out-of-pocket expenses separately
2 from the recovery -- secondly, we could provide you with --
3 Your Honor with authority that -- where class counsel has been
4 awarded recovery of expenses such as meals or transportation.

5 And these are costs that we out laid for our clients
6 and we don't believe it's unreasonable to recoup that from the
7 settlement -- from the settlement fund.

8 THE COURT: All right. And the mediator's fee?

9 MR. RAHMAN: Well, Your Honor, it's a cost that we
10 incurred and it was a cost that --

11 THE COURT: Right, just -- look. There are a lot of
12 costs you could incur and to make it an extreme example, just
13 to illustrate the point.

14 You could have chosen to travel by helicopter
15 instead of taxi and you could have incurred the cost, but
16 would it be reasonable?

17 So why is it reasonable where there is a free option
18 available to take out of the client's recovery? There may be
19 reasons why it makes sense for you guys. It's more efficient
20 for your practice, and I get that.

21 But to have the clients subsidize it is the
22 question. Why is that reasonable?

23 MR. RAHMAN: Well, we certainly could have gone
24 before Your Honor or another magistrate judge. But we went
25 before a very experienced and noted mediator, Mr. Hunter

1 Hughes --

2 THE COURT: And I'm sure he's more experienced and
3 informed on these matters than any mere federal magistrate
4 judge could be.

5 But the question is, again, why incur the cost
6 rather than take advantage of the free service?

7 MR. RAHMAN: Well, Your Honor, I can't predict what
8 would have happened or what results we would have achieved had
9 we gone a different route.

10 All I can say is in our view Mr. Hughes got us a
11 tremendous result. And I can't say for certain whether another
12 judge or another mediation would have gotten us that result,
13 but I will say I attended the mediation along with colleagues
14 and the plaintiffs. You know, we feel that he did an amazing
15 service for us by getting us -- by getting the parties to come
16 to the agreement that he was able to get us to.

17 And so while I don't know what would have happened
18 had we gone to a free magistrate judge, I can say that you
19 know, every penny that was spent on Mr. Hughes, ultimately, in
20 our view, led to a much better result, or more money in the
21 pockets of our class for our clients, than we would have
22 achieved otherwise.

23 THE COURT: Well, I certainly get the instinct that
24 you get what you pay for.

25 All right. Those are the things I wanted to address

1 and I'm going to reserve a recommendation pending the
2 supplemental submission I'm going to get.

3 So I'm going to get the revised amounts that are
4 going to the claimants. I'm going to get, Ms. Klein, the
5 authority that you were describing before.

6 I'm going to reject Ms. Estafania to find out
7 whether she is objecting or opting out. You're going to
8 provide me your billing records.

9 Oh, the last thing. And then, of course, if there
10 is anything any of you want to get into, I'm happy to take it
11 up.

12 What's your take on the administrator? Ms. Williams
13 was understandably concerned about the role of the
14 administrator.

15 And then there's the concern you weren't getting
16 responsive results from it. Are you planning to stick with
17 this administrator or look for somebody new?

18 MS. CHRISTENSEN: I mean, in my view it's a highly
19 competitive business and there are multiple other firms that
20 we can select.

21 THE COURT: Okay.

22 MS. CHRISTENSEN: And they understand that.

23 THE COURT: I leave it to all of you to exercise
24 your judgment because I know you all have the incentive to
25 make sure that you're getting good service and don't have

1 people complaining to you and then ultimately the court.

2 So just give me an update on what you're proposing with the
3 administrator.

4 I assume that some of these things may require just
5 tweaking the proposed settlement document itself. Is that
6 right?

7 Certainly, if there's a change in administrator --
8 MS. CHRISTENSEN: Oh, I'm sorry. You mean we will
9 be eliminating --

10 THE COURT: No, no. Or replacing. If you do, you
11 need to just submit something -- a revised document.

12 MS. CHRISTENSEN: Oh, right.

13 THE COURT: All right. Just attend to the -- you
14 know, crossing the T's and dotting the I's in terms of the
15 settlement paperwork.

16 How long would you like to submit the supplemental
17 matters?

18 MS. KLEIN: Your Honor, we don't need any time for
19 our letter, so --

20 THE COURT: Well, I'd like just on thing that covers
21 everything, rather than get it piecemeal. And I'm happy to
22 give you the time that you all think you need for it.

23 MR. RAHMAN: Maybe a week from today.

24 THE COURT: Okay. If you think you can do it.
25 Again, I'm not trying to rush you. So I want you to get

1 everything done to your satisfaction. So a week? All right.

2 And once I receive your submissions, I will make my
3 recommendation to Judge Matsumoto. Anything else for today,
4 folks?

5 MS. KLEIN: Nothing, Your Honor.

6 THE COURT: Ms. Williams, or Mr. Mills, or Mr.
7 Thomas, is there anything any of you wanted to add?

8 MR. THOMAS: I wanted to know -- I'm here observing
9 and I heard that --

10 THE CLERK: I'm sorry, Judge.

11 THE COURT: Oh, yes. I'm sorry. We should -- for
12 the record, you're Mr. Thomas, yes?

13 MR. THOMAS: Yes.

14 THE COURT: Go ahead. Oh, would you actually come
15 up so we can get -- we make an audio recording and from back
16 there we're not going to hear you.

17 MR. THOMAS: All right.

18 THE COURT: Go ahead, Mr. Thomas.

19 MR. THOMAS: Yes. The administrators said that
20 there was supposed to a lowered judgment. From my
21 understanding it was 1.5 million-five hundred thousand going
22 to the administrators -- the legal staff --

23 THE COURT: To the counsel.

24 MR. THOMAS: -- for the class. The legal staff is
25 for the class action participants, right? 500,000 was supposed

1 to go to them. 35,000 to each original claimant.

2 THE COURT: Yeah. I think they've lowered that
3 amount.

4 MR. THOMAS: They said 35,000 each. That was a
5 total. A total of 35,000 between the three, which would leave
6 a million and change for the class.

7 MR. RAHMAN: A little less than that.

8 MR. THOMAS: A little less. 895,000 or something --
9 970 -- 65,000.

10 There are plenty of people in the class that -- some
11 worked two days. Some worked five days. Some worked five
12 years. Some worked eight years.

13 Now in that time I worked five years, from 2012 to
14 2016. All right. That's five years, if you count it.

15 There was times where I didn't get my bonuses.
16 There was times where I didn't get paid the proper hourly rate
17 that I was supposed to get. And that was through a five year
18 period.

19 So I wanted to know since the letter stated that
20 payments will be made on or about October. 25 percent in
21 October of this year, and then another 25 percent in March of
22 2019 and the 50 percent of whatever judgment I was supposed to
23 receive is supposed to come in on or before December of 2019.

24 But he just stated that it's not going to be a
25 million. A little less than a million. You were saying that

1 it was only going to be 400 and something thousand for the
2 class.

3 MS. CHRISTENSEN: Can I answer that?

4 THE COURT: Yes.

5 MS. CHRISTENSEN: Can I answer that?

6 THE COURT: Yeah.

7 MS. CHRISTENSEN: I hear -- I think I understand
8 your question. Correct me if I'm wrong.

9 What we were representing to the court is the only
10 people -- members of the class who will be receiving money are
11 those who submitted -- who are opting into the class, okay,
12 who have made their claims, meaning that had to take some
13 affirmative step.

14 And so they (indiscernible) only 1,200 people out
15 of 5,500. There were potentially, 5,500 class members, but
16 only 1,200 class members submitted --

17 MR. THOMAS: Submitted the form by June 22nd.

18 MS. CHRISTENSEN: Correct. And so we were saying
19 when you total -- for those 1,200 people, what they will be
20 paid it was \$458,879.

21 So had more people -- if there were 2,000 instead of
22 1,200 --

23 MR. THOMAS: It would have been less of a judgment.

24 MS. CHRISTENSEN: There would have been more money
25 that they had to pay.

1 THE COURT: In other words --

2 MR. THOMAS: More money that the plaintiffs had to
3 pay or more money that the class would receive.

4 THE COURT: Well, here's how I understand it, and
5 counsel, please, tell me if I've got this wrong. The
6 defendants agreed to pay up to \$1.5 million.

7 MR. THOMAS: Correct.

8 THE COURT: With a third going to counsel.

9 MR. THOMAS: Leading counsel.

10 THE COURT: Yes. So a million, roughly, would be
11 available for members of the class.

12 The way they've structured it is everybody is
13 assigned a certain number of points and they get their share
14 based on the number of points. So if you work longer you have
15 more of a payment.

16 MR. THOMAS: More points. Yeah.

17 THE COURT: But if half of the class doesn't come
18 forward to make their claim, it's not that that million gets
19 divided up among the half of the class who did come forward.
20 The other half goes back to the defendant's pocket.

21 MR. THOMAS: It goes back to the defendant.

22 THE COURT: Yeah. Instead of saying the class is
23 entitled to this amount and we'll divide it up among the
24 people who come forward, they're saying we're -- no matter how
25 few people come forward, we're not going to give you more than

1 your ten percent of what we think you were entitled to, or 75
2 percent of what we think we could have won. However you want
3 to characterize it. We're not going to give you more than
4 that, than your share.

5 MS. KLEIN: Your Honor, if I may --

6 MR. THOMAS: But that share -- shouldn't that share
7 -- should be -- you're stating that it was 5,000 original
8 class action members, correct?

9 THE COURT: Something like that. 5,600.

10 MR. THOMAS: Well, close to it. Roughly. Roughly.
11 Only 1,200 opted in.

12 THE COURT: Yeah.

13 MR. THOMAS: So the other 3,800 they're not
14 claiming. Their claim is they cease -- they cease --

15 THE COURT: Nothing and their claims are
16 extinguished, right? Is that right?

17 MS. CHRISTENSEN: Yes, correct.

18 MR. THOMAS: So their claims go back to the
19 plaintiffs?

20 MR. RAHMAN: The defendant.

21 THE COURT: The defendant. In other words, for
22 those 3,000 people or so they get nothing and they can't ever
23 go to court.

24 MR. THOMAS: Correct. That part I understand. But
25 their share is not distributed --

1 THE COURT: Nope.

2 MR. THOMAS: -- amongst the class that opted in.

3 THE COURT: Right.

4 MS. KLEIN: Your Honor, with one correction on that.
5 There's a 30 percent minimum guarantee. So if it wasn't 30
6 percent, it would be redistributed to get it to 30 percent.

7 THE COURT: Okay. Fair enough.

8 MR. THOMAS: All right.

9 THE COURT: Now do you understand that, anything
10 that you want to say about it?

11 MR. THOMAS: I'm just going to ask them roughly how
12 much I'm supposed to get since they said that we would get
13 something in October of this year.

14 THE COURT: Okay. I don't know if --

15 MR. THOMAS: I just want to know through their
16 accounting how much I --

17 THE COURT: And Mr. Thomas, I certainly want you to
18 get that information. I just don't know if anybody was
19 expecting you to be here and so would have that information at
20 hand.

21 MR. THOMAS: Understood.

22 THE COURT: Does anybody have that?

23 MS. KLEIN: No.

24 THE COURT: So can I ask you -- same for you, Mr.
25 Mills?

1 MR. MILLS: No, my question --

2 THE COURT: Come on up, if you will.

3 MR. MILLS: -- pertains to that and it's --

4 THE COURT: Hold on. We just want to make sure --

5 MR. MILLS: -- will be --

6 THE COURT: Sir, just wait till you get up near a
7 microphone before you talk.

8 MR. MILLS: Will that amount be -- will I be able to
9 calculate that amount from the agreement?

10 THE COURT: From the agreement. I don't think so.

11 MR. MILLS: They said they had a formula in the
12 agreement.

13 THE COURT: Well, the agreement has a formula, but I
14 don't think the notice does. Is that correct?

15 MR. RAHMAN: That's correct.

16 THE COURT: Okay. So, again, what I would encourage
17 you all to do is provide your contact information to the
18 lawyers so that they can have the claims administrator get in
19 touch with you and let you know what your share is.

20 MR. MILLS: All right.

21 THE COURT: Okay. Anybody think there's anything
22 more that we should do with respect to Mr. Mills or Mr.
23 Thomas? And I know you weren't expecting them to be here
24 today, so you couldn't be prepared to answer their questions
25 about their particular amounts. But anything else anybody

1 wants to take up today?

2 MR. RAHMAN: No, we've given them our business cards
3 so please reach out to us.

4 MR. MILLS: Yeah, everything is pretty much --

5 THE COURT: Okay.

6 MR. MILLS: -- self explanatory.

7 THE COURT: All right. Thank you all very much.

8 MR. RAHMAN: I'm sorry. One last point, Your Honor.

9 THE COURT: Yes.

10 MR. RAHMAN: Ms. Christensen was correct that there
11 has been 1,200 or so class members who have opted in out of
12 the 5,500.

13 I just wanted to note that there were a high number
14 of class members who worked very few days at OAC. There were --
15 -- from our numbers, there was about 1,300 -- 35 class members
16 who just worked seven or fewer days.

17 THE COURT: Yep.

18 MR. RAHMAN: So there were a large percentage of the
19 class members who had very small claims. But I've noticed
20 that the average amount that's going to be to the claimants
21 who are interviewers will be close to \$400. And for the
22 trainees about \$65.

23 So it would seem that a lot of the class members who
24 did not opt in were likely those who had the smaller claims
25 who worked the fewer days.

1 THE COURT: Right. Well, look. You have a third
2 maybe, not even, of people that opted in. But the amount that
3 they're getting is close to half of the amount that you had
4 set aside. So I inferred that.

5 But that does remind me. You're giving me some
6 numbers that I think would be useful to have in making my
7 recommendation.

8 Could you as part of the supplemental submission
9 provide the transcript of today's proceedings so that I have
10 what you told me here today as well to rely on when I make my
11 recommendation?

12 MR. RAHMAN: That's fine. Yes.

13 THE COURT: All right. Thank you, all. Have a very
14 good day. Thank you for coming in.

15 (Proceedings concluded at 11:52 a.m.)
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1 I, CHRISTINE FIORE, court-approved transcriber and certified
2 electronic reporter and transcriber, certify that the
3 foregoing is a correct transcript from the official electronic
4 sound recording of the proceedings in the above-entitled
5 matter.

6
7 

8 _____ August 13, 2018

9 Christine Fiore, CERT
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